

FDPA

Examination Objectives & Procedures

Objectives

1. To determine whether an institution performs required flood determinations for loans secured by improved real estate or a mobile home affixed to a permanent foundation in accordance with the final rule.
2. To determine if the institution requires flood insurance in the correct amount when it makes, increases, extends, or renews a loan secured by improved real estate or a mobile home located or to be located in a SFHA.
3. To determine if the institution provides the required notices to the borrower, servicer and to the Director of FEMA whenever flood insurance is required as a condition of the loan.
4. To determine if the institution requires flood insurance premiums to be escrowed when flood insurance is required on a residential building and other items are required to be escrowed.
5. To determine if the institution complies with the forced placement provisions if at any time during the term of a loan it determines that flood insurance on the loan is not sufficient to meet the requirements of the regulation.
6. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

Procedures

The following procedures should be performed, as appropriate:

- ù by reviewing previous examinations and supervisory correspondence;
- ù by obtaining and reviewing the institution's policies, procedures and other pertinent information;
- ù by reviewing the institution's system of internal controls;
- ù through discussions with management; and
- ù by reviewing a sample of loan files.

Coverage and Internal Control

1. Determine the method(s) used by the institution to ascertain whether improved real estate or mobile homes are or will be located in a special flood hazard area.
2. Verify that the process used accurately identifies special flood hazard areas.
3. For those special flood hazard areas identified, determine if the communities in which they are located participate in the National Flood Insurance Program (NFIP).
4. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, verify that it complies with regulatory requirements.
5. If the institution purchases servicing rights, review the contractual obligations placed on the institution as servicer by the owner of the loans to ascertain if flood insurance requirements are identified and compliance responsibilities are adequately addressed
6. If the institution utilizes a third party to service loans, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately addressed.

Property Determination Requirements

1. Verify that flood zone determinations are accurately prepared on the Standard Flood Hazard Determination Form (SFHDF).
2. Verify that the institution only relies on a previous determination if it is not more than seven years old, is recorded on the SFHDF and that it is not in a community that has been remapped.
3. If the institution utilizes a third party to prepare flood zone determinations, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately covered, including the extent of the third party's guarantee of work and the procedures in place to resolve disputes relating to determinations.
4. Verify that the institution retains a copy of the completed SFHDF, in either hard copy or electronic form, for as long as it owns the loan.

Purchase Requirements

1. For loans that require flood insurance, determine that sufficient insurance was obtained prior to loan closing and is maintained for the life of the loan.
2. If the institution makes loans insured or guaranteed by a government agency (SBA, VA or FHA) determine how it complies with the requirement not to make these loans if the security property is in a SFHA within a non-participating community.

Determination Fee Requirements

1. Determine that any fees charged to the borrower by the institution for flood zone determinations (absent some other authority such as contract language) are charged only when a loan:
 - ù is made, increased, renewed or extended;
 - ù is made in response to a remapping by FEMA; or
 - ù results in the purchase of flood insurance under the forced placement provisions.
2. If other authority permits the institution to charge fees for determinations in situations other than the ones listed above, determine if the institution is consistent in this practice.
3. Determine the reasonableness of any fees charged to a borrower for flood determinations by evaluating the method used by the institution to determine the amount of the charge. Consider, for example, the relationship of the fees charged to the cost of services provided.

Notice Requirements

1. Ascertain that written notice is mailed or delivered to the borrower within a reasonable time prior to loan closing.
2. Verify that the notice contains:
 - ù a warning that the property securing the loan is or will be located in a SFHA;
 - ù a description of the flood insurance purchase requirements;
 - ù a statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers, if applicable; and

- ù a statement whether Federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a Federally declared disaster, if applicable.
3. If the seller or lessor provided the notice to the purchaser or lessee, verify that the institution obtained satisfactory written assurance that the notice was provided within a reasonable time before the completion of the sale or lease transaction.
 4. Verify that the institution retains a record of receipt of the notice provided to the borrower for as long as it owns the loan.
 5. If applicable, verify that the institution provided written notice to the servicer of the loan within the prescribed time frames and that the institution retains a record of receipt of the notice for as long as it owns the loan.
 6. If the institution transfers servicing of loans to another servicer, ascertain whether it provides notice of the new servicer's identity to the flood insurance carrier (Director of FEMA's designee) within prescribed time frames.

Escrow Requirements

1. If the institution's policies or loan documents require the escrow of funds to cover charges such as taxes, premiums for hazard insurance or other fees, verify that the institution requires the escrow of funds for loans secured by residential improved real estate to cover premiums and other charges associated with flood insurance.
2. For loans closed after October 1, 1996, where flood insurance is required and where the loan is subject to RESPA, verify that the institution's escrow procedures comply with Section 10 of RESPA.

Forced Placement Requirements

1. If the institution determines that flood insurance coverage is less than the amount required by the FDPA, ascertain that it has appropriate policies and procedures in place to exercise its forced placement authority.
2. If the institution is required to force place insurance, verify:
 - ù that it provides written notice to the borrower that flood insurance is required, and
 - ù that if the required insurance is not purchased by the borrower within 45 days from the time that the institution provides the written notice, that the institution purchases the required insurance on the borrower's behalf.

FDPA

Examination Checklist

The following questions are designed to be used in conjunction with the Examination Procedures to guide the examiner in a comprehensive review of the requirements of the regulation as it is applied to depository institutions.

Coverage

1. Does the institution offer or extend credit (consumer or commercial) that is secured by improved real estate or mobile homes as defined in the regulation? If yes, complete the remainder of this checklist.
2. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, does it have procedures to ensure that the requirements of the regulation are followed?
3. If the institution purchases servicing rights to loans covered by the regulation, do the documents between the parties specify the contractual obligations on the institution with respect to flood insurance compliance?
4. If the institution utilizes third parties to service loans covered by the regulation, do the contractual documents between the parties meet the requirements of the regulation?

Property Determination

1. If the institution utilizes a third-party to prepare flood zone determinations, do the contractual documents between the parties:
 - ù provide for the third-party's guarantee of work?
 - ù contain provisions to resolve disputes relating to determinations, to allocate responsibility for compliance, and to address which party will be responsible for penalties incurred for noncompliance?
2. Are the determinations prepared on the Standard Flood Hazard Determination Form developed and authorized by FEMA?
 - ù If the form is maintained in an electronic format does it contain the elements required by FEMA?
3. Does the institution maintain a record of the Form either in hard copy or electronic form for as long as it owns the loan?

4. Does the institution rely on a prior determination only if it is made on the SFHDF, is no more than seven years old and the community has not been remapped?

Determination Fees

1. Absent some other authority (such as contract language) does the institution charge a fee to the borrower for a flood determination only when:
 - ù it is made when a loan is made, increased, renewed or extended, or
 - ù it is made in response to a remapping by FEMA, or
 - ù it results in the purchase of flood insurance under the forced placement provisions?
2. If the institution has other authority to charge fees for determinations in situations other than those noted above, is the practice followed consistently?
3. If the institution requires the borrower to obtain life-of-loan monitoring and passes that charge along to the borrower:
 - ù does it either break out the original determination charge from the charge for life-of-loan monitoring or include the full amount of the charge as a finance charge for those loans subject to TILA?
4. Are the fees charged by the institution for making a flood determination reasonable?

Notice Requirements

1. Are borrowers whose security property is located in a Special Flood Hazard Area (SFHA) provided written notice within a reasonable time prior to loan closing?
2. Does the notice contain the following required information?
 - ù a warning that the building or mobile home is located in a SFHA;
 - ù a description of the flood insurance requirements;
 - ù a statement that flood insurance is available under the NFIP and is also available from private insurers; and
 - ù a statement whether federal disaster relief assistance may be available in the event of damage to a building or mobile home caused by flooding in a Federally-declared disaster.

3. If the institution uses the alternate notice procedures in certain instances as permitted by the regulation, does it obtain the required satisfactory written assurance from the seller or lessor?
4. Does the institution provide a copy of the borrower notification to the servicer of the loan within the required time frames?
5. Does the institution retain a record of receipt of the notifications provided to the borrower and the servicer for as long as it owns the loan?

Insurance Requirements

1. If an improved property or mobile home is located in a SFHA and flood insurance is required, does the institution have the borrower obtain a policy, with the institution as loss payee, in the correct amount prior to closing?
2. Where multiple properties securing the loan are located in SFHAs, does the institution have sufficient insurance either through a single policy with a scheduled list of several buildings or multiple policies, to meet the minimum requirements of the regulation? (See narrative for description of minimum requirements)

Escrow Requirements

1. Does the institution have policies requiring escrows for property taxes, hazard insurance or other fees on residential buildings?
 - ù If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?
2. If the institution has no specific policies regarding escrows do its loan documents permit the institution to escrow for the above items?
 - ù If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?
3. On loans closed on or after October 1, 1996, that are subject to RESPA and where flood insurance is required, does the institution comply with the provisions of §10 of RESPA (Section 3500.17 of Regulation X) for those escrows?

Forced Placement Requirements

1. If at any time during the life of the loan, the institution determines that property securing a designated loan lacks adequate flood insurance coverage:

Mandatory Purchase of Flood Insurance Guidelines

- ù Does the institution provide written notice to the borrower stating that the necessary coverage must be obtained within 45 days of the notice or the institution will purchase it on the borrower's behalf?
- ù Does the institution purchase the coverage on the borrower's behalf if the borrower does not obtain the required policy within the required time period?

Notice to Director of FEMA

1. Does the institution provide the appropriate notice to the carrier of the insurance policy (the Director of FEMA's designee) regarding the identity of the servicer of a designated loan?
2. If the institution sells or transfers the servicing of designated loans to another party, does it have procedures in place to provide the appropriate notice to the Director's designee within 60 days of the effective date of the transfer of the servicing?

Examiner Comments and Observations: _____
